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Nos. 85-796 & 85-797

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

AMERICAN FINANCIAL SERVICES ASSOCIATION,
Petitioner,

v.

FEDERAL TRADE COMMISSION, *et al.*,
Respondents.

SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS,
Petitioner,

v.

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On Petitions for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF RESPONDENT AMERICAN CONFERENCE OF UNIFORM CONSUMER CREDIT CODE STATES SUPPORTING PETITIONERS

JAMES W. RIDDELL
Riddell, Holroyd & Butler
1215 National Place
1331 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 662-7430
Attorney for American Conference of Uniform Consumer Credit Code States

November 27, 1985

BEST AVAILABLE COPY

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Pursuant to Rule 19.6, respondent American Conference of Uniform Consumer Credit Code States, which intervened in the proceeding in the court below to urge that the Credit Practices Rule be set aside, files this brief in support of the petitioners.

1. Respondent is an association of Consumer Credit Administrators in the states that have adopted, in whole or in substantial part, versions of the Uniform Con-

sumer Credit Code. The conference's mission is to establish, through the voluntary action of the states, a uniform nation-wide system of consumer credit regulation ensuring "an adequate volume of credit at reasonable cost under conditions fair to both consumers and creditors." [1] Those states that have thus far adopted versions of the Code in whole or in substantial part include Colorado, Indiana, Iowa, Kansas, Maine, Oklahoma, South Carolina, Wisconsin, and Wyoming.

2. The American Conference of Uniform Consumer Credit Code States opposed the Credit Practices Rule from the beginning and intervened in the court below to urge that the rule be set aside. We support the position urged by the American Financial Services Association and the South Carolina Department of Consumer Affairs in their petitions in this Court. In our view, the Credit Practices Rule constitutes an unlawful usurpation by the Federal Trade Commission of state regulation of the consumer credit market—a crude, piecemeal effort to address problems comprehensively treated by the consumer protection laws of the various states. We believe that Congress, in enacting the Magnuson-Moss Act, did not intend to authorize the FTC to second-guess the considered judgments of elected state officials as to the most effective means of regulating consumer credit transactions so as to protect consumers from abuse while safeguarding their access to credit.

3. We do not contend that the FTC may not act pursuant to its authority under Section 18(a)(1)(B) to prevent creditor abuse where the states have failed to do so. In this case, however, the FTC has identified creditor abuses that the states have already addressed by means of more narrowly tailored remedies—remedies carefully fashioned to balance the need for consumer

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[1] Uniform Consumer Credit Code (Draft 1974), 7 U.L.A., preparatory note at 583.

protection against the benefits of maximizing the availability of credit while minimizing its cost. By imposing needlessly broad remedies for the abuses it found, the FTC has disrupted the regulatory schemes fashioned by the individual states in a way never contemplated by Congress. And the damage does not stop there. The Credit Practices Rule also threatens to wreck efforts at the state level, by the people's elected representatives, to coordinate their individual consumer protection regimes so as to achieve national uniformity on a voluntary basis and in a politically accountable manner. Congress did not intend the Federal Trade Commission to act as a national Consumer Protection Agency, and the Credit Practices Rule therefore is not merely unwise but beyond the agency's statutory authority.

CONCLUSION

For the foregoing reasons, the petitions should be granted.

Respectfully submitted,

JAMES W. RIDDELL
Riddell, Holroyd & Butler
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1331 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 662-7430
Attorney for American Conference of Uniform Consumer Credit Code States

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